

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
TERRY DAVIS, JESSE DAVIS,
ROOSEVELT DAVIS, JAMES DAVIS,
AND MELINDA DAVIS,

Plaintiffs,

-against-

**ANSWER TO
AMENDED
COMPLAINT**

04 CV 3299 (DLI) (RLM)

Trial By Jury Requested

THE CITY OF NEW YORK, SERGEANT
RAYMOND JOHNSON, DETECTIVE ERIK
PAULSEN, DETECTIVE CHRISTOPHER
KNAPPENBERGER, DETECTIVE RAYMOND
NEUMAN, DETECTIVE PATRICK BERGIN,
POLICE OFFICER WALDRON AND CAPTAIN
JOHN MARCHICA,

(filed by ECF)

Defendants.

-----X
Defendants City of New York, Raymond Johnson, Erik Paulsen, Christopher Knappenberger, Raymond Neuman, Patrick Bergin, Edward Waldron, and John Marchica, by their attorney Michael A. Cardozo, Corporation Counsel of the City of New York, as and for their answer to the amended complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the amended complaint, except admit that plaintiffs purport to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the amended complaint, except admit that plaintiffs purport to bring this action and to invoke this Court's jurisdiction as stated therein.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “3” of the amended complaint.

4. Deny the allegations set forth in paragraph “4” of the amended complaint, except admit that Raymond Johnson, Erik Paulsen, Christopher Knappenberger, Raymond Neuman, Patrick Bergin, Edward Waldron, and John Marchica are employed by the City of New York as police officers.

5. Deny the allegations set forth in paragraph “5” of the amended complaint, except admit that plaintiffs purport to sue the individual defendants as stated therein, and state that the allegations concerning the capacity in which the officers worked are legal conclusions rather than averments of fact and, accordingly, no response is required.

6. Deny the allegations set forth in paragraph “6” of the amended complaint, except admit that defendant City of New York is a municipal corporation authorized pursuant to the laws of the State of New York, maintains a police department, and employs the individual defendant officers; and state that the allegations concerning defendant City of New York’s responsibilities are legal conclusions rather than averments of fact and, accordingly, no response is required.

7. Defendants state that the allegations set forth in paragraph “7” of the amended complaint are conclusions of law rather than averments of fact.

8. Deny the allegations of paragraph “8” of the amended complaint, except admit that plaintiffs Terry Davis, James Davis, Jesse Davis, and Roosevelt Davis were at 409 Beach 51st Street, Apt. 1-G, Far Rockaway, New York, on or about April 23, 2003; and deny knowledge or information sufficient to form a belief as to whether plaintiff Melinda Davis was at 409 Beach 51st Street, Apt. 1-G, Far Rockaway, New York, on or about April 23, 2003.

9. Deny the allegations set forth in paragraph “9” of the amended complaint, except admit that police executed a search warrant at 409 Beach 51st Street, Apt. 1-G, Far Rockaway, New York, on or about April 23, 2003.

10. Deny the allegations set forth in paragraph “10” of the amended complaint, except admit that, in connection with executing a search warrant at 409 Beach 51st Street, Apt. 1-G, Far Rockaway, New York, on or about April 23, 2003, police secured the premises, conducted pat-down searches of the occupants, and requested pedigree information.

11. Deny the allegations set forth in paragraph “11” of the amended complaint, except admit that police officers searched the apartment pursuant to a search warrant.

12. Deny the allegations set forth in paragraph “12” of the amended complaint, except admit that police informed plaintiffs that they were executing a search warrant.

13. Deny the allegations set forth in paragraph “13” of the amended complaint, except admit that police searched the apartment at 409 Beach 51st Street, Apt. 1-G, Far Rockaway, New York, pursuant to a search warrant, arrested and transported James Davis, Jesse Davis, and Roosevelt Davis to the 101st Precinct for arrest processing, and charged James Davis, Jesse Davis, and Roosevelt Davis with possession of ammunition and marijuana.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the amended complaint.

15. Deny the allegations set forth in paragraph “15” of the amended complaint.

16. Deny the allegations set forth in paragraph “16” of the amended complaint.

17. Deny the allegations set forth in paragraph "17" of the amended complaint.

18. Deny the allegations set forth in paragraph "18" of the amended complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

19. The amended complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

20. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

21. At all times relevant to the acts alleged in the amended complaint, defendant City of New York, its agents and officials, acted reasonably in the proper and lawful exercise of their discretion. Therefore, defendant City of New York is entitled to governmental immunity from liability.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

22. Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct and/or the conduct of intervening non-parties and was not the proximate result of any act of defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

23. There was probable cause for the search, arrests and/or detentions.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

24. Punitive damages are not obtainable as against defendant City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

25. Plaintiffs have failed to comply with notice-of-claim requirements that are conditions precedent to suit.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

26. This action is barred in part by the applicable statute of limitations.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

27. Defendants Raymond Johnson, Erik Paulsen, Christopher Knappenberger, Raymond Neuman, Patrick Bergin, Edward Waldron, and John Marchica have not violated any clearly established constitutional right of which a reasonable person would have known and, therefore, are protected by qualified immunity from liability.

WHEREFORE, defendants City of New York, Raymond Johnson, Erik Paulsen, Christopher Knappenberger, Raymond Neuman, Patrick Bergin, Edward Waldron, and John Marchica request judgment dismissing the amended complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 26, 2005

MICHAEL A. CARDOZO

Corporation Counsel of the
City of New York

Attorney for Defendants City of New York,
Raymond Johnson, Erik Paulsen,
Christopher Knappenberger, Raymond
Neuman, Patrick Bergin, Edward Waldron,
and John Marchica

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By: _____/S/_____
SUSAN P. SCHARFSTEIN (SS 2476)

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<p>MICHAEL A. CARDOZO <i>Corporation Counsel of the City of New York</i> <i>Attorney for Defendants</i> 100 Church Street New York, N.Y. 10007</p> <p><i>Of Counsel: Susan P. Scharfstein (SS 2476)</i> <i>Tel: (212) 227-4071</i> NYCLIS No.:</p>	
<p><i>Due and timely service is hereby admitted.</i></p> <p>New York, N.Y., 200 . . .</p> <p>..... Esq.</p> <p>Attorney for</p>	